IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3529 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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RAJESH KASHIRAM PUNYANI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3529 of 2002

MR HR PRAJAPATI for Petitioner No. 1

MR A.Y.KOGJE, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 17/06/2002

ORAL JUDGEMENT

1. Heard ld. counsel Mr. Prajapati for the petitioner and ld. AGP Mr. Kogje for the Respondents. After issuance of Rule, affidavit of resistance has not been filed by the State of Gujarat till this date.

2. The petitioner who is brother of detenu Shri Adarsh @ Billa Kashinath Puniyani (hereinafter referred to as the detenu) has challenged the legality and validity of the order of detention dated 27.3.2001 passed by the Commissioner of Police, Surat City, but the same has yet not been served and executed on the detenu. The grievance of ld. counsel Mr. Prajapati appearing for the detenu is that non-execution of the order of detention by the respondent State and its machinery does not seem to be bonafide.

3. Invoking the jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner has prayed for appropriate, writ, order or directions as prayed for in para-14 of the petition. However, ld. counsel Mr. Prajapati for the petitioner has fairly submitted that in view of the settled legal position, the petitioner does not press for Relief 14(A) of the petition, but prayed to grant Relief 14(C) of the petition directing the respondents to execute the order of detention at Annex.A and detaining authority may not be permitted to wait till the detenu comes out of Tihar Jail, New Delhi, where he is facing trial of a criminal case. It is averred in the petition specifically that for the purpose of execution of order of detention, executing authority namely P.I., Umra Police Station approached the ld. Magistrate at New Delhi on 12.3.2002 and prayed for custody of the detenu, but as the prayer was not for transfer warrant, the Court refused to hand over custody of the detenu. The detenu was also required for the trial in the said criminal case pending before the Court at New Delhi. Executing machinery could have executed the detention order along with all relevant material on that very day or immediately thereafter through jail machinery or through Court. It is the say of the detenu that because of this attempt made by the P.I., Umra Police Station, he came to know about passing of the order of detention against him in reference to the offence registered at Surat as referred to by the Commissioner of Police in the order of detention.

4. State machineries and especially the authorities dealing with the liberty of a citizen is obliged to act bonafide and with transparency. It would not be legal or proper to say that the order of detention can be served only if custody of the detenu is available. The order of detention, in the present case, could have been served on the detenu through the Court where he is Under-trial or through the jail authorities of Tihar Jail, New Delhi where he is kept as under-trial prisoner. So, prayer (C)

requires to be granted. I have considered the relevant documents produced along with the petition and in my view, detaining authority is not entitled to withhold the order of detention with it and serve and execute the same as per its wish or whim.

5. In the result, petition is partly allowed. Respondents are hereby directed to execute order of detention dated 27.3.2001 passed by the Commissioner of Police, Surat City on the detenu who is kept as an under-trial prisoner at Tihar Jail, New Delhi, either through the Court concerned at New Delhi where the detenu is the Under-trial or through the jail authorities of Tihar Jail, New Delhi where the detenu is kept as under-trial prisoner forthwith and preferably with three weeks from the date of receipt of writ of this order. It is, however, clarified and observed that if State machinery is of the view that now no formal detention order is required and think that detention order passed earlier (Anex.A) against the detenu requires to be revoked, then they may not serve the order of detention, otherwise, the order of detention shall be executed and served as directed above so that appropriate further steps can be taken by the detenu. Since the ld. counsel appearing for the petitioner has not pressed main reliefs reserving all rights to challenge the legality and validity of the order of detention, it is observed that it will be open for the detenu to challenge the legality and validity of the order of detention on merits as and when the same is executed on the detenu.

6. Rule is made absolute to the aforesaid extent. Direct Service is permitted.

17.6.2002 [C.K. BUCH, J]
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